

REMARKS

A. Relevant Portions of Kung (U.S. Pat. No. 6,508,756) Are NOT Prior Art to the Present Application

a. Basis of Rejection in Office Action

The claims of this application are directed to a combination of a cardiac support device in combination with electrical therapy such as pacing or defibrillation. In the Office Action, the claims were rejected as anticipated or obvious by Kung (U.S. Patent No. 6,508,756).

The Office Action suggests most claims were anticipated by Kung Column 12, lines 11 – 21 and Column 19, lines 15 – 65. Obviousness was directed to those claims describing suture attachment which the Examiner deemed obvious in view of the drawstrings of Kung.

Column 12, lines 11 – 21 of Kung describe an epicardial lead near the apex of the heart. Sensing from the lead is used to coordinate the pulsing of the artificial myocardium 11 as shown in Fig. 2 of Kung.

Unlike the active artificial myocardium described in Column 12, lines 11 – 21, Column 19, lines 15 – 65 are directed to a purely passive device such as is shown in Figs. 22 and 23. This text makes no reference to use of a passive device in combination with an electrical therapy.

b. The Present Application Has a Priority Date of July 13, 1998

As is reflected in the Filing Receipt, the present application is a continuation of 09/565,621 filed May 4, 2000 which is a continuation of 09/114,510 filed July 13, 1998 (now U.S. Patent No. 6,123,662).

Unlike Kung (as will be described), the present application is a true continuation with disclosure identical to its earliest priority document. Enclosed is U.S. Pat. No. 6,123,662 so the Examiner can conveniently note the identity of the disclosure. The Examiner will also note that the present application contains no new declaration and relies solely upon the declaration in the parent case (now the '662 patent).

c. The Filing Date of Kung Is AFTER the Filing Date of the Present Application

Kung was filed December 30, 1998 – more than five months after the priority date of the present application.

Applicants note that Kung purports to claim priority to as far back as June 1995. However, and as discussed in the following section, the relevant portions of Kung are only entitled to a December 30, 1998 priority date (i.e., five months after the priority date of the present application).

d. The Relevant Portions of Kung Are NOT Entitled to an Earlier Priority Date

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he face of Kung suggests it is a continuation of Ser. No. 09/023,592 (now U.S. Pat. No. 6,224,540). However, this is inaccurate. In fact, Kung is a continuation-in-part of the '592 application. Any new matter in the Kung patent is only entitled to a priority date of December 30, 1998.

For the Examiner's convenience, a copy of U.S. Pat. No. 6,224,540 is enclosed. The Examiner will note the addition of a great amount of new matter between the '540 patent and the Kung patent. The '540 patent's Figs. 1A through 7 correspond with Figs. 19A through 25 of Kung. However, Figs. 1A through 18 are not found in the '540 patent.

A vast amount of new text is added in Kung. The description of the passive device of Kung (Figs. 22 and 23 and text at Column 19, lines 15 – 65) is similar to the description of the passive device of the '540 patent (Figs. 4 and 5 and text at Column 5, lines 20 – 65) are similar. However, the important text of an electrical treatment noted by the Examiner (i.e., Kung, Column 12, lines 11 – 21) is nowhere to be found in the '540 patent. Further, the text describing Figs. 1A through 18 is new.

Enclosed is a copy of the Declaration and Power of Attorney filed in the Kung application. Had the Kung disclosure been a true continuation (instead of a continuation-in-part), no such Declaration would have been required.

As a result, the prior art (i.e., a disclosure before July 13, 1998) does not teach or suggest a passive cardiac support in combination with an electrical therapy.

B. Amendments to Claims

Claim 18 is amended to strike reference to defibrillation since, as noted, the specification supports both defibrillation and pacing therapies. Claim 18 now recites current to the heart for electrical therapy. New claims 39 and 40 specify the therapies as defibrillating or pacing. Also, passage of current from the heart (e.g., sensing) is moved from claim 18 to new claim 38. Claim

36 is amended to conform to this change. New claim 41 recites the device may constrain to a maximum volume as disclosed in the specification.

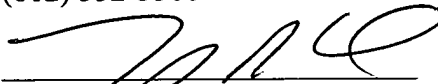
CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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